



## CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 169

**Citations Affected:** IC 35-43-4-2; IC 35-47; IC 35-50-2-11.

**Synopsis:** Firearms. Conference committee report for Engrossed Senate Bill 169. Makes it a Level 5 felony for a person to provide an individual with a firearm if the person knows that the individual: (1) is legally ineligible to possess a firearm; or (2) intends to use the firearm to commit a crime; and increases the penalty to a Level 3 felony if the firearm is used to commit murder. Provides a defense for certain persons accused of providing firearms to ineligible individuals if: (1) the accused person contacted NICS to request a background check on the individual; and (2) the accused person received authorization from NICS to provide the firearm to the individual. Makes theft a Level 6 felony instead of a Class A misdemeanor if the property involved is a firearm. Allows the state to seek a sentencing enhancement of from five years to 20 years if a person uses a firearm to commit: (1) a felony against the person that results in death or serious bodily injury; (2) kidnapping; or (3) criminal confinement as a Level 2 or Level 3 felony. **(This conference committee report: Increases the penalty to a Level 3 felony for providing a firearm to an ineligible person or a person who intends to use the firearm to commit a crime if the person uses the firearm to commit murder. Removes the request that the legislative council assign to a study committee certain topics concerning firearms violence, law enforcement, and background checks at gun shows.)**

**Effective:** July 1, 2014.



## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 169 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 35-43-4-2, AS AMENDED BY P.L.158-2013,
- 3 SECTION 463, IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who knowingly or
- 5 intentionally exerts unauthorized control over property of another
- 6 person, with intent to deprive the other person of any part of its value
- 7 or use, commits theft, a Class A misdemeanor. However, the offense is:
- 8 (1) a Level 6 felony if:
- 9 (A) the value of the property is at least seven hundred fifty
- 10 dollars (\$750) and less than fifty thousand dollars (\$50,000);
- 11 **(B) the property is a firearm; or**
- 12 ~~(B)~~ (C) the person has a prior unrelated conviction for:
- 13 (i) theft under this section; or
- 14 (ii) criminal conversion under section 3 of this chapter; and
- 15 (2) a Level 5 felony if:
- 16 (A) the value of the property is at least fifty thousand dollars
- 17 (\$50,000); or
- 18 (B) the property that is the subject of the theft is a valuable
- 19 metal (as defined in IC 25-37.5-1-1) and:
- 20 (i) relates to transportation safety;
- 21 (ii) relates to public safety; or

(iii) is taken from a hospital or other health care facility, telecommunications provider, public utility (as defined in IC 32-24-1-5.9(a)), or key facility;

and the absence of the property creates a substantial risk of bodily injury to a person.

(b) In determining the value of property under this section, acts of theft committed in a single episode of criminal conduct (as defined in IC 35-50-1-2(b)) may be charged in a single count.

(c) For purposes of this section, "the value of property" means:

(1) the fair market value of the property at the time and place the offense was committed; or

(2) if the fair market value of the property cannot be satisfactorily determined, the cost to replace the property within a reasonable time after the offense was committed.

A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property.

SECTION 2. IC 35-47-2-7, AS AMENDED BY P.L.158-2013, SECTION 577, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) Except an individual acting within a parent-minor child or guardian-minor protected person relationship or any other individual who is also acting in compliance with IC 35-47-10 (**governing children and firearms**), a person may not sell, give, or in any other manner transfer the ownership or possession of a handgun or assault weapon to any person under eighteen (18) years of age.

(b) ~~It is unlawful for a person to sell, give, or in any manner transfer~~ **A person who knowingly or intentionally sells, gives, or in any other manner transfers** the ownership or possession of a handgun to another person who the person **knows:** ~~has reasonable cause to believe:~~

~~(1) has been:~~

~~(A) convicted of a felony; or~~

~~(B) adjudicated a delinquent child for an act that would be a felony if committed by an adult; if the person seeking to obtain ownership or possession of the handgun is less than twenty-three (23) years of age;~~

~~(2) is a drug abuser;~~

~~(3) is an alcohol abuser; or~~

~~(4) is mentally incompetent;~~

**(1) is ineligible for any reason other than the person's age to purchase or otherwise receive from a dealer a handgun; or**

**(2) intends to use the handgun to commit a crime;**

**commits criminal transfer of a handgun, a Level 5 felony. However, the offense is a Level 3 felony if the other person uses the handgun to commit murder (IC 35-42-1-1).**

(c) ~~A person who knowingly or intentionally violates this section commits a Level 5 felony. A person who purchases a handgun with the intent to:~~

**(1) resell or otherwise provide the handgun to another person who the person knows is ineligible for any reason to purchase or otherwise receive from a dealer a handgun;**

**(2) resell or otherwise provide the handgun to another person**

1 who the person knows intends to use the handgun to commit  
2 a crime; or

3 (3) transport the handgun outside Indiana to be resold or  
4 otherwise provided to another person who the transferor  
5 knows:

6 (A) is ineligible to purchase or otherwise receive a  
7 handgun; or

8 (B) intends to use the handgun to commit a crime;  
9 commits the straw purchase of a handgun, a Level 5 felony.  
10 However, the offense is a Level 3 felony if the other person uses the  
11 handgun to commit murder (IC 35-42-1-1).

12 (d) As used in this subsection, "NICS" has the meaning set forth  
13 in IC 35-47-2.5-2.5. It is a defense to a prosecution under  
14 subsection (b)(1) that:

15 (1) the accused person contacted NICS (or had a dealer  
16 contact NICS on the person's behalf) to request a background  
17 check on the other person before the accused person sold,  
18 gave, or in any other manner transferred the ownership or  
19 possession of the handgun to the other person; and

20 (2) the accused person (or dealer acting on the person's  
21 behalf) received authorization from NICS to sell, give, or in  
22 any other manner transfer ownership or possession of the  
23 handgun to the other person.

24 SECTION 3. IC 35-47-2.5-1, AS AMENDED BY P.L.190-2006,  
25 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26 JULY 1, 2014]: Sec. 1. (a) Sections 2 through 5 of this chapter ~~does~~  
27 do not apply to the following:

28 (1) Transactions between persons who are licensed as firearms  
29 importers or collectors or firearms manufacturers or dealers under  
30 18 U.S.C. 923.

31 (2) Purchases by or sales to a law enforcement officer or agent of  
32 the United States, the state, or a county or local government.

33 (3) Indiana residents licensed to carry handguns under  
34 IC 35-47-2-3.

35 (b) Notwithstanding any other provision of this chapter, the state  
36 shall participate in the NICS if federal funds are available to assist the  
37 state in participating in the NICS. If:

38 (1) the state participates in the NICS; and

39 (2) there is a conflict between:

40 (A) a provision of this chapter; and

41 (B) a procedure required under the NICS;

42 the procedure required under the NICS prevails over the conflicting  
43 provision of this chapter.

44 SECTION 4. IC 35-47-2.5-14 IS REPEALED [EFFECTIVE JULY  
45 1, 2014]. Sec. 14. (a) This section does not apply to a person who  
46 provides a handgun to the following:

47 (1) A child who is attending a hunters safety course or a firearms  
48 safety course or an adult who is supervising the child during the  
49 course.

50 (2) A child engaging in practice in using a firearm for target  
51 shooting at an established range or in an area where the discharge

of a firearm is not prohibited or is supervised by:

(A) a qualified firearms instructor; or

(B) an adult who is supervising the child while the child is at the range:

(3) A child engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses firearms as a part of a performance or an adult who is involved in the competition or performance.

(4) A child who is hunting or trapping under a valid license issued to the child under IC 14-22.

(5) A child who is traveling with an unloaded firearm to or from an activity described in this section.

(6) A child who:

(A) is on real property that is under the control of the child's parent; an adult family member of the child; or the child's legal guardian; and

(B) has permission from the child's parent or legal guardian to possess a firearm.

(b) A person who purchases a handgun with the intent to:

(1) resell or otherwise provide the handgun to another person who the person knows or has reason to believe is ineligible for any reason to purchase or otherwise receive from a dealer a handgun; or

(2) transport the handgun out of the state to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm;

commits a Level 6 felony.

(c) If the violation of this section involves a transfer of more than one (1) handgun, the offense is a Level 5 felony.

SECTION 5. IC 35-47-2.5-15 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 15: (a) A person who is ineligible to purchase or otherwise receive or possess a handgun in Indiana who knowingly or intentionally solicits, employs, or assists any person in violating section 14 of this chapter commits a Level 6 felony.

(b) If the violation involves a transfer of more than one (1) handgun, the offense is a Level 5 felony.

SECTION 6. IC 35-47-2.5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 16. (a) This section does not apply to a person who complies with IC 35-47-10 (governing children and firearms).**

**(b) A person who provides a firearm to an individual who the person knows:**

**(1) is ineligible to purchase or otherwise receive or possess a firearm for any reason other than the person's age; or**

**(2) intends to use the firearm to commit a crime;**

**commits criminal transfer of a firearm, a Level 5 felony. However, the offense is a Level 3 felony if the individual uses the firearm to commit murder (IC 35-42-1-1).**

**(c) It is a defense to a prosecution under subsection (b)(1) that:**

(1) the accused person (or dealer acting on the person's behalf) contacted NICS to request a background check on the individual before the accused person provided the firearm to the individual; and

(2) the accused person (or dealer acting on the person's behalf) received authorization from NICS to provide the firearm to the individual.

SECTION 7. IC 35-47-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. **(a) This section does not apply to section 7 of this chapter.**

**(b) Except as provided in subsection (c), this chapter does not apply to the following:**

(1) A child who is attending a hunters safety course or a firearms safety course or an adult who is supervising the child during the course.

(2) A child engaging in practice in using a firearm for target shooting at an established range or in an area where the discharge of a firearm is not prohibited or supervised by:

(A) a qualified firearms instructor; or

(B) an adult who is supervising the child while the child is at the range.

(3) A child engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses firearms as a part of a performance or an adult who is involved in the competition or performance.

(4) A child who is hunting or trapping under a valid license issued to the child under IC 14-22.

(5) A child who is traveling with an unloaded firearm to or from an activity described in this section.

(6) A child who:

(A) is on real property that is under the control of the child's parent, an adult family member of the child, or the child's legal guardian; and

(B) has permission from the child's parent or legal guardian to possess a firearm.

(7) A child who:

(A) is at the child's residence; and

(B) has the permission of the child's parent, an adult family member of the child, or the child's legal guardian to possess a firearm.

**(c) This chapter applies to a child, and to a person who provides a firearm to a child, if the child:**

**(1) is ineligible to purchase or possess a firearm for any reason other than the child's age; or**

**(2) if the child intends to use a firearm to commit a crime.**

SECTION 8. IC 35-47-10-5, AS AMENDED BY P.L.158-2013, SECTION 602, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. **(a)** A child who knowingly, intentionally, or recklessly

**(+)** possesses a firearm for any purpose other than a purpose

described in section 1 of this chapter ~~or~~

~~(2) provides a firearm to another child with or without remuneration for any purpose other than a purpose described in section 1 of this chapter;~~

commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Level 5 felony if the child has a prior conviction under this section or has been adjudicated a delinquent for an act that would be an offense under this section if committed by an adult.

**(b) A child who knowingly or intentionally provides a firearm to another child whom the child knows:**

**(1) is ineligible for any reason to purchase or otherwise receive from a dealer a firearm; or**

**(2) intends to use the firearm to commit a crime;**

**commits a Level 5 felony. However, the offense is a Level 3 felony if the other child uses the firearm to commit murder (IC 35-42-1-1).**

SECTION 9. IC 35-47-10-6, AS AMENDED BY P.L.158-2013, SECTION 603, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. An adult who knowingly ~~or intentionally or recklessly~~ provides a firearm to a child ~~for any purpose other than those described in section 1 of this chapter, with or without remuneration,~~ **whom the adult knows:**

**(1) is ineligible for any reason to purchase or otherwise receive from a dealer a firearm; or**

**(2) intends to use the firearm to commit a crime;**

commits dangerous control of a firearm, a Level 5 felony. However, the offense is a Level 4 felony if the adult has a prior conviction under this section, **and a Level 3 felony if the child uses the firearm to commit murder (IC 35-42-1-1).**

SECTION 10. IC 35-50-2-11, AS AMENDED BY P.L.158-2013, SECTION 665, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) As used in this section, "firearm" has the meaning set forth in IC 35-47-1-5.

(b) As used in this section, "offense" means:

(1) a felony under IC 35-42 that resulted in death or serious bodily injury;

(2) kidnapping; or

(3) criminal confinement as a Level 2 or Level 3 felony.

(c) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

(d) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(e) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally used a

1 firearm in the commission of the offense, the court may sentence the  
2 person to an additional fixed term of imprisonment of **between** five (5)  
3 **years and twenty (20)** years.

(Reference is to ESB 169 as reprinted February 27, 2014.)



**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 169**

**S**igned by:

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Senator Young R Michael  
Chairperson

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Representative McMillin

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Senator Arnold J

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Representative DeLaney

**Senate Conferees**

**House Conferees**